THE CHILD VICTIM/WITNESS PILOT PROJECT

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DEPARTMENT OF JUSTICE
NOVA SCOTIA

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PREAMBLE

Service to child victim/witnesses in Nova Scotia is in its infancy as it has been operational on a province-wide basis for only one year. In light of the length of time that it takes for a criminal matter to proceed through the system, only a portion of cases have received all of the components offered in the service. Based on this limited experience, the measurement of outcomes per se is somewhat premature. Also, it is important to make a distinction between the service delivered during the pilot and pure research. Control groups of children who did not receive service were not identified for comparison purposes with those who did. The purpose of this report on the Child Victim Witness Pilot Project is four-fold:

* Review the literature in the field of child victim/witness
* Provide an overview of other child victim/witness service models in Canada
* Describe the Child Victim/Witness Pilot Project in Nova Scotia
* Propose suggestions for the next steps based on the experience of children in Nova Scotia within the criminal justice system in 1994-1995.

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INTRODUCTION

I THE CHILD VICTIM WITNESS PILOT PROJECT - PURPOSE

The Victims' Services Division, Department of Justice, Province of Nova Scotia introduced the Child Victim Witness Pilot Project in September of 1993. The primary goal of the pilot was to implement a court preparation service for children who were called upon to give evidence within a criminal proceeding. The initial model of service contemplated a centralized structure. This aspect of the design required adaptions as the service evolved. In keeping with the expectation that services be accountable and measurable, objectives were established in September 1994 for the Pilot Project:

* Increase the child's knowledge about court procedures and roles of the key players and to assist the child's understanding of how the court process unfolds.

* Address the child's fears and reduce the anxiety associated with giving evidence.

* Provide specific assistance in building communication skills with a particular focus on the need to be acquainted with the kinds of questions associated with cross-examination.

* Offer emotional support in relation to the needs of the child victim/witness and family.

A secondary goal was to identify the population of children engaged within the criminal justice system in Nova Scotia. With no single agency having as its mandate the provision of the necessary services from beginning to end of the criminal proceeding and with no clear picture of the age, gender, charge and relationship between the complainant and accused, it was difficult to design the service.

In order to effectively address the needs of children within the criminal justice system in Nova Scotia, it was necessary to get a picture of their experience.

II HISTORY - RECENT DEVELOPMENTS IN THE FIELD

Our response as a society to the phenomenon of child abuse has been intermittent and contradictory. Our religious and cultural heritage provide the context for this off-again, on-again approach to the protection of children. Our current acceptance of the reality of child abuse relates specifically to advances in medicine. The development of the x-ray as a diagnostic device is largely credited with making any form of child abuse, particularly physical abuse, undeniable fact. The fracture of the long bones of infants and bleeding under the outer membrane of the brain often occur together. These two factors are now commonly accepted as the primary indicators of "shaken baby" or

"battered child"syndrome. It was the documentation of previous episodes by physicians C.Henry Kempe and his colleagues that led to this diagnosis. In 1962, "The Battered Child Syndrome" appeared in the Journal of the American Medical Association. The book, "The Battered Child," published in 1968, ensured that child physical abuse could no longer be denied and child protection activists across North America began drafting legislation in the 1970's. The Children's Services Act was enacted in Nova Scotia in 1976. Child sexual abuse, without an instrument to measure it, remained largely undetected for another decade.

During the 1970's there was growing concern among front-line child protection personnel regarding child sexual abuse. In 1980 the Government of Canada established a special committee to examine the issue. Concerns regarding child sexual abuse were subsequently confirmed by the research of the committee. The magnitude of the issue is outlined in the Report of the Committee on Sexual Offenses Against Children now commonly referred to as The Badgely Report. The Committee promoted the position that child sexual abuse should no longer be viewed as a mental health problem. The Committee's recommendations included a strong emphasis on the need to involve the criminal justice system in these matters. The Badgely Report documented the inadequacy of the Criminal Code definitions relating to sexual offenses against children. In addition, as the laws and rules of evidence required that a child's testimony always be supported by other testimony, children did not enjoy the same protection that adults had through the courts.

Effective January 1, 1988, Bill C-15 brought about changes to the Criminal Code, and the Canada Evidence Act. In the research document entitled Studies on the Sexual Abuse of Children in Canada, the Department of Justice - Canada, sets out the goals and objectives of the new legislation;

Goal #1. To provide better protection to child sexual abuse victim/witness

Objective #1: Broaden the range of conduct captured by the Criminal Code.

Objective #2: Provide more protection for young victims.

Objective #3: Eliminate gender bias regarding victims and offenders.

Objective #4: Provide protection for children in cases where disclosure is delayed.

Goal #2. To enhance successful prosecution of child sexual abuse cases

Objective #5: Minimize the problems of the child sexual abuse victim giving evidence.

Objective #6: Recognize the credibility of the child victim/witness in child sexual abuse cases.

Goal #3. To improve the experience of the child victim/witness

Objective #7: Avoid repetitious interviews with the child victim/witness.

Objective #8: Provide support and assistance to the child victim/witness while giving testimony.

Objective #9: Provide protection to the child victim/witness from public knowledge of the child's identity and the circumstances of the occurrence.

Goal #4. To bring sentencing in line with severity of the offence

Objective #10: Provide for a range of sentence responses to a broad range of severity of abuse.

III WHAT THE LITERATURE CAN TELL US

It has been noted by S.S. Ceci, a noted researcher who has published extensively in the fields of developmental, social and cognitive psychology, that there has been more research on children's eyewitness testimony conducted in the past decade than in the rest of the 20th century. The volume of research and literature in the field of child victim/witnesses is enormous and burgeoning daily. It is a challenge to begin a synthesis of the literature. It is also significant to note that historically there has not always been a comfortable fit between the interests of the behavioral science and legal communities. The amendments to the Criminal Code in Bill C-15 have brought increasing numbers of children into the courtroom. This has created a greater requirement for strategies to effectively deal with children's needs. Psychologist M.D. Hall notes in an article in the Family Law Quarterly (1989):

> It is generally acknowledged by practitioners in both fields - law and psychology - that they remain unfamiliar and uncomfortable when they move into the others' domain... . The question we face is: Can we optimize the divergence, i.e. move from one domain to the other to maximize knowledge and skill? And can we do this with some mutual respect for the complexities and the limitations of each field?

> It is reasonable to assume that the movement from one arena to the other will be fraught with some measure of difficulty and discomfort. It is also reasonable to assume that eventual decision making in the interest of the public good would profit from the complementary contributions of both the law and behavioral science. (Hall, 1989, pg. 451-455)

Involvement of children in the criminal justice system is very recent. This system, in place for over two hundred years, is challenged by the complexities that child victim/witnesses bring to it. Crimes involving children usually occur in private places without witnesses, and between individuals who have frequently established a level of trust. The accused may be a member of the child's family, a neighbour or a respected member of the broader community. Most importantly, we are not accustomed to accepting the word of a child alone. We are concerned that a child who might be confused or coached could provide testimony that could result in a wrongful conviction. So there is unease within the justice system in dealing with these cases.

Intense debate exists in the social sciences about the competence of children to be reliable witnesses. There are polarities between child protection advocates and defense advocates about the suggestibility of children and the media has capitalized on this controversy and magnified the conflict. The general public are left with confusion that impacts on the jury system. Conventional wisdom gives rise to speculation as to whether the child abuse professional community is engaged in a witch hunt or not. Several high profile cases in both the United States and Canada have exposed the suggestibility of young children when zealous and unskilled investigators repeatedly question them.

The Suggestibility of Children

Suggestibility concerns the degree to which children's encoding, storage, retrieval and reporting of events can be influenced by a range of social and psychological factors. While the research and scholars can generally inform and shed light on various factors, the examiner must have a body of facts in order to make a determination in a specific case. In this emerging science, clinical judgement is required in making a determination as to the validity of a particular child's statement.

The key variables in determining the reliability of the evidence of a child are the following:

* the quality of the investigation
* the context of the child's statement is as important as the content; (i.e. the circumstances under which the original report was made).
* how many times the child was questioned
* the hypothesis of the interviewer who questions the child
* the kinds of questions the child was asked
* the consistency of the child's report over a period of time

In their synthesis of the literature in the area of suggestibility, Stephen Ceci and Maggie Bruck are able to report a consensus in some vital core areas:

* Preschoolers are more vulnerable than older children to a variety of factors that contribute to their suggestibility.

* Although young children can be accurate reporters even if they undergo a number of suggestive interviews, some children can make mistakes not just on peripheral detail but about central events that involve their own bodies.

* The risk of suggestibility can be avoided if the following factors are adhered to when communicating with children:

    * Informal conversations about the alleged incident should be kept to a minimum with parents as they can have the same potential to influence a young child as an "investigative" interview. These should be kept to a bare minimum.

    * Open-ended non-leading questions should be used as they result in the most accurate information from young children.

    * Demand characteristics (even subtle cues, smiles, rewards) should be minimized as they can influence the child's answers in the hopes of gaining the questioner's approval.

In essence, the research shows that children are able to encode and retrieve large amounts of information about an event, especially when it is personally experienced and highly meaningful. The research also demonstrates that if repeated and leading questions are used or if adults motivated to distort have access to the child, then potentially serious cognitive and social hazards may await young child witnesses.

We also know that children are more influenced by leading questions: (a) when they are being asked to describe people or things, rather than events; (b) when pressed to provide additional details; (c) when they do not have a good memory of the information in question; (d) after a long delay; (e) when the interview is stressful, and; (f) when the interviewer lacks appropriate skills (Dent 1991).

In summary, the psychological research shows that children, like adults, can be suggestible but that this risk can be minimized by the use of sensitive questioning techniques in the hands of a skilled interviewer.

Communication with Children in the Courtroom

The courtroom environment must be factored into the mix of variables facing child witnesses, for it is a foreign medium to them. Nothing has prepared the child for the experience of repeated questioning. Generally, repeated questioning can imply that the first answer may be wrong. As a rule, children are not given permission to disagree with authority figures such as teachers, parents or a defense attorney. Children are not always capable of making the distinction between the expectations of school and court. Sometimes children are encouraged to guess or "take a stab at it" in school, even if they don't know the answer. To do so in court, clearly could result in inaccurate testimony.

There appears to be some confusion in the area of competency tests. It is a test in relation to the child's ability to provide the court with information about events. When children are questioned about religion, birth dates and numbers, their responses do not demonstrate their competence to provide the court with information about those events.

The Handbook on Questioning Children by Dr. Anne Graffam Walker (1994), is an excellent resource in the area of courtroom communication. Dr. Walker is a forensic linguist who specializes in courtroom communication. She has been engaged in the subject of language and the law for almost twenty years. Through her research, presentations and publishings, she has identified the 15 principles important in the communication with children.

1. We do not question "children."
   Each child is unique in terms of the patterns of development and experience that shape him/her.

2. Language is shaped by experience.
   Children learn how language is used in their immediate family. These lessons will shape how they respond to adults' questions.

3. Children and adults do not speak the "same" language.
   There are several developmental stages that occur as late as 12 years of age and into adolescence. They have a bearing on the telling of past events.

4. Language is not an all-or-nothing affair.
   The gradual process of learning language may mean that a child's use of a word or a term is intermittent.

5. Inconsistency in children's statements is normal.

6. Children are very literal in their early approach to language. This is a reflection of both lack of cognitive development and lack of life's experiences. For young children, this results in a difficulty in moving from the general to the specific.

7. Adult-like use of language does not necessarily reflect adult-like linguistic or cognitive capabilities.

8. Young children, in particular, have difficulty in attending to more than one or two things at once.

9. Children will not necessarily tell you that they don't understand you.

10. Children's responses to your questions are not necessarily answers to your questions.

11. The ability to recite a list is not the same as the ability to understand the contents.

12. Children are not born with the ability to give adult-like accounts of their personal experiences.

13. Familiarity matters. This principle has direct bearing on the preparation of children for court.

14. Culture matters.

15. Even young children can be competent witnesses in a court of law.

Dr. Walker's conclusion states:

> "Lawyers bear the final responsibility of enabling children to tell what they know; the judges act as the last gatekeepers for clear communication in their courts ... some may see any attempt at modifying the language of the courts or the language of questioning as prejudicial to one side or the other ... It is hard to imagine how anyone's rights would be jeopardized, or how justice could be anything other than well served, if we apply to everyone, including children, the principle of simplicity in speech."

The current literature and research place full responsibility for competency on all adults who communicate with children or evaluate children's communication within the criminal justice system. This specialized skill in communicating with children can be acquired through training. The search for the truth begins with a choice of the appropriate question by the adult.

Profile of Child Sexual Abuse

Children are presumed incapable of giving informed consent to sexual relationships where there is a significant disparity in age, size, knowledge or position of authority/trust, (Finkelhor, 1979). Beyond the question of consent, our general societal position is that children are neither physically nor psychologically/emotionally ready for genital sexual experiences. A youth may be physically mature, yet lack the emotional maturity to understand the implications and consequences of sexual relationships. Premature sexual experience is identified as tramagenic ... an experience that alters a child's cognitive or emotional orientation (Finkelhor and Browne 1985). The ensuing distortions pose a serious negative consequence for the development of self-worth and self-control.

The exact incidence of child sexual abuse is difficult to establish because there is no national reporting system for crimes against children. Jurisdictions such as Nova Scotia, Ontario and Manitoba that do have a tracking system such as a child abuse register, do not use a consistent set of reporting and recording practices as each is mandated under separate provincial child welfare statutes. While a conviction in a criminal proceeding is the primary method used to track the incidence of child abuse, this is far from a complete picture, for even matters that proceed through the court system do not always result in a conviction. In addition, findings of child abuse that are recorded in Family Court proceedings are not tracked by the criminal justice system. The population of children who never disclose remains invisible. There is still much debate as to whether the prevalence of sexual abuse has increased or the reporting of child sexual abuse has increased.

In light of the unreliability of reporting, it has been proposed by Lucy Berliner in The Nature and Dynamics of Child Sexual Abuse, that a more accurate mechanism for establishing the rate of child sexual abuse can be found through retrospective prevalence surveys of adults in the general population. Even in the studies and surveys, however, there are substantial variations in the incidence of child sexual abuse in adult populations. The range of methodologies is in part responsible for these findings. Different approaches -- phone, personal contact, written surveys, -- provide another basis for these variations. Finally, differing definitions and various approaches to how questions are framed all influence survey outcomes. Studies that use broad definitions, have numerous screening questions and provide follow-up in-person interviews, document higher instances of childhood sexual abuse than the other methods outlined.

Risk factors for sexual abuse are starting to be identified. Individuals with a history of childhood sexual abuse are more likely to come from single-parent families or families with a high level of marital conflict than non-abused control groups (Bryer 1987). Children who report unhappiness in their family or who feel themselves emotionally unsupported by their mother are also identified as a risk population (Finkelhor 1993). In addition, these families are generally characterized by psychopathology in the form of depression, substance abuse, and violence amongst parents and siblings (Bell 1981, Bliss 1984, Russell, 1986). In non-criminal samples

of adults, socio-economic status does not appear to be associated with sexual abuse, unlike other forms of abuse. However, an American study, The National Incidence Study (Sedjack, 1992) found that poor children were substantially more likely to be reported in the community as having been sexually abused than other socio-economic groups. Recent studies have found developmentally disabled children to be at higher risk. The National Centre on Child Abuse and Neglect in the United States reported in 1993 that the rate of sexual abuse amongst maltreated children with disabilities was 1.8 times the rate of maltreated children without disabilities.

CHARACTERISTICS OF CHILD SEXUAL ABUSE

Secrecy

Child sexual abuse is characterized by secrecy. In many instances there is a period of grooming during which there is a gradual process of sexualizing the relationship (Berliner & Conte 1990). Use of threats, creation of fears and promise of retaliation and punishment occur in more than one third of cases (Gomes, Schwartz, Horowitz & Cardarelli 1990). Under the guise of sex education or hygiene, children can be drawn into sexualized activity. Misrepresenting sexual touching as affection, and offers of gifts and money are seductive and persuasive means of enlisting a child's participation. Once the child's participation has been achieved, the offender's opportunity to maintain control is even greater as threats can then be used to convince the child that s/he will not be believed and s/he will be fully responsible for the consequences to self, the offender and their families if s/he tells. It is therefore not surprising that there is usually a delay between the last incident and the report. In over half of the cases in a particular study, children did not initiate the report. (Gomes, Schwartz, Herowitz & Cardarelli, 1990). What brought these children to someone's attention was their behaviour deterioration. In another study (Gomes-Schwartz, Herowitz & Cardarelli 1990) only two percent of the cases were disclosed within a week of the incident.

Inconsistencies in Children's Statements

Defense attorneys frequently assert that inconsistent statements are indicative of fabrication; however, other reasons may underlie a child's inconsistencies.

When a child has been repeatedly abused over a number of years, often her/his recollections of an individual event may be blurred. When asked to describe one particular event, confusion may result for the child. In a state of confusion, a child is more likely to provide an inconsistent statement from one interview to the next. (Hudson, 1990)

> "Disclosure of child sexual abuse is best described by this research as a process, not an event. The common presumption that most abused children are capable of immediate, active disclosure by providing a coherent, detailed account in an initial investigative interview is not supported by these findings, which suggest that only 11% of the subjects were in active disclosure at the time of the initial interview".

A second factor that results in inconsistent statements involves the psychological dynamics when the accused has been a trusted individual and one for whom the parent, mother in particular, may still have attachments and ambivalent feelings. The division of family loyalties among members of the extended family places a burden on the child who now feels caught in the middle.

The third cause for inconsistency in children's statements relates to their developmental immaturity. We return again to the topic of communication, in this instance to Karen Saywitz's study on the developmental limitations in how children communicate. Children have been observed to experience difficulty in evaluating their own communication for possible errors, omissions, inconsistencies or contradictions. Young children, especially, have difficulty taking another's perspective. They have difficulty even identifying when they don't comprehend a question or instruction. Preschool children frequently do not understand cause and effect and so are not developmentally capable of providing interpretations. Developmentally inappropriate questions do not test for the competence of the child. Rather, they highlight the lack of competence of the adult questioner. Children who are developmentally capable of speaking in simple sentences of 8 to 10 words are not capable of responding to a question 30 words long. In a question that contains several elements, the child may only respond to one. The response may not identify which part to the adult questioner.

A final problematic area is that of describing an event that occurred multiple times — ie., counting how many times. Children learn the sequence of numbers well before they learn the concept behind the number. Hence, a child may be capable of reciting numbers from 0 to 10 but be incapable of demonstrating an understanding of exactly what quantity the number 5 represents.

The Phenomena of Recantation

Recantation refers to the retraction of a previous allegation of abuse that was made and maintained over a period of time. Up until 1991, little objective research was available concerning the subject of recantation. Sorensen and Snow analyzed 630 cases of alleged sexual abuse through qualitative analysis of clinical notes, conversations, audio and video tapes. In approximately 22% of the cases, children recanted their allegations. Sorensen & Snow identified the following reasons:

1. Pressure from the accused
2. Pressure from the family
3. Negative personal consequence
4. Videotaping
5. Retelling parents
6. Fear of going to court
7. Fear of the investigative process with Police and Child Protection Services

It is of note that of those who recanted, 93% reaffirmed the abuse allegation, meaning that the child reasserted the validity of the previous statement of sexual abuse.

Videotaping is generally seen as a positive support to the child. It allows for supportive adults around the child to become fully aware of the details, address their own emotional reaction to the events and then become emotionally available to support the child. Even with this support, the sexual aspect of the abuse can continue to create fear, guilt and confusion. The more time that elapses between the time of the child's initial report and the judicial resolution of the case, the greater the risk of recantation.

Parental Response to a Child's Disclosure

The evidence suggests that parental attitudes towards the child and towards the child's role in the events are important determinants in the long term impact of child sexual abuse. The child's interpretation of the experience and the child's perception of the mother's response to the child and to the abuse are critical. Most parents believe their children's reports of sexual abuse and take some kind of protective action (Conte & Schverman, 1987). The closer the relationship between the accused and the mother, the more likely it is that the mother's support of the child could be compromised. The role of mother's support comes under another form of scrutiny when the parents are separated or the claim is made in the midst of the separation process. Within this dynamic, a parent may be more open to misinterpret ambiguous behaviour on the part of the child or the nature of the parental relationship may explain the slightly increased rate of uncertain or untrue complaints of sexual abuse than is found in the general body of disclosures.

Emotional Effects of Child Sexual Abuse

There is no single profile or constellation of behaviours that is indicative of child sexual abuse. A series of factors have however been identified that provide assistance in assessing the impact/degree of trauma for a particular child. Those factors are set out by Hillman-Solek-Tefft 1988.

- Chronological age (the psychic trauma is generally greater with younger children).
- Developmental level(s) of the child (cognitively and psycho sexually)
- Child's emotional health prior to the abuse
- Frequency of abuse
- Nature of the abuse (whether it entailed intensity, force, trauma and so on)
- How the child perceived the action
- Nature of the nonsexual relationship between the child and the offender and the child's associated feelings.

- Supportiveness of family, school, peer and community groups.

- Strength of the family system

- Availability of supportive figures and helping professionals

The research of David Finkelhor conducted through the Family Violence Research Program at the University of New Hampshire has identified four core injuries caused by child sexual abuse. They are: traumatic sexualization, betrayal, stigmatization, and powerlessness. (American Journal of Ortho Psychiatry. 55: 530-54 (1985)).

Traumatic Sexualization results in an alteration in the child's feelings, awareness and behaviour in reference to sexuality. The child typically will have strong reactions to physical contact and displays of affection. The child may also display characteristics of sexual deviance such as excessive display of sexual play, possibly engaging with another child to repeat the scene in which the abuse occurred.

Betrayal can be operative on two levels. Most children have some sense that there is something wrong with engaging in intimate behaviour with an adult. The discovery that someone on whom they are dependent or feel close to has caused them harm is a source of guilt and anxiety. If bribes, tricks or lies have been involved in the "secret", the guilt becomes double edged. Keeping the secret is a betrayal of a parent; telling still harms the parent but also the perpetrator.

Once sexual abuse has been disclosed, children become intensely concerned about their status with others. Males may be more stigmatized by their fear of a connotation of homosexuality while girls may be more preoccupied with the "damaged goods" attribution. They know that gossip travels fast and that their peers, school group and neighbourhood are likely to have at least some kind of knowledge of the events.

There are two main components to the traumagenic dynamic of powerlessness.

- A child's will and wishes are overruled. They have no control over how many interviews, how much counselling, how often to go to court, or how long they must wait before the aftermath of disclosure is brought to a close.

- The child experiences a sense of physical risk and threat of physical injury. This fear is compounded by the real or imagined threats of punishment and retaliation often made by the accused.

The overall emotional effect of child sexual abuse is linked closely to how the case proceeds through the criminal justice system. A significant aspect to be considered is the emotional impact on child sexual abuse victims of testifying in criminal court.

Emotional Effects of Legal Intervention

Research has identified a host of conditions that have been demonstrated to be stressful for some children. The following are the conditions identified in the literature that are believed to play a negative part in how effectively the child testifies. These conditions are also tied to the short term and long term impact of the events themselves. Finally these factors are identified with the issue of revictimization of children within the legal system. They are as follows:

(a) long delays
(b) lack of preparation
(c) rescheduling of cases
(d) fear of public speaking and revealing intimate personal information in front of strangers
(e) attempts at character defamation
(f) intimidating layout of the courtroom
(g) lack of child-friendly waiting areas that ensure no contact with the accused
(h) confronting the accused, especially if threatened not to tell
(i) insensitive questioning techniques
(j) lack of protection during cross-examination
(k) lack of social support from professionals and family

The work of Gail Goodman contributes the most recent findings in the research into the emotional effects of testifying in court. As very little research had been conducted in this field, the following hypotheses that she developed at the outset were drawn from the research and literature available on children in other stressful and traumatic situations such as hospitalization, and separation and divorce.

- To the extent that a limited understanding of a stressful or unfamiliar event contributes to adverse emotional effects, younger children's adjustment was predicted to be more negatively affected than older children's. On the other hand, the extent to which an older child can bring a better understanding to an event, the greater is the likelihood that s/he would worry about it.

- The extent of the child's fear of the accused was predicted to be another factor in the degree of stress.

- The hypothesis concerning the legal system projected that repeated testifying and lengths of time within the legal system would have a bearing on impact.

The findings of her research were remarkably consistent with the research into children's reactions to other stressful events. The two critical features were multiple exposures to the stresses and lack of parental support.

Consistent age differences failed to emerge when caretakers were asked to evaluate adjustment; however, when asked directly, older children were much more vocal and expressed more negative feelings. Older children's greater understanding of the legal system, their heightened awareness of taboos concerning description of sexual activity in public and their heightened sensitivity during adolescence to sexuality and self-determination are all possibly at play.

The requirement to testify more than once is significant. As in the case of multiple hospitalizations, there is an increased negative impact on the child when required to testify more than once. (Rutter, 1983). The interpretation given is that children can cope with exposure to a stressful event but that repeated exposure starts to erode children's resistance.

In the short term, children who testified in court showed greater distress than those who did not. However, at the time of the seven month follow-up, these distresses had disappeared in all but a subset of children. The factors in this subset are worth noting as these children clearly are the group most in need of service:

- more severely abused children
- females
- children who had little family support
- children whose parents demonstrated low social adjustment
- children with economically disadvantaged families
- children who had experienced repeated interviews by authorities

There are many areas of the courtroom experience that are awaiting research. The goal of such research needs to be relevant to the day-to-day reality of the courtroom. The search for the truth in assisting children to be good witnesses should not and does not need to compromise the rights of the accused. Representation should be sought from the Judiciary and Bar as research into the legal system and the courtroom is being conducted. Their input would assist in ensuring the relevance and credibility of the research. It would also, hopefully, provide a closer link between academic research and the development of social policy and legal procedure concerning children in the justice system.

IV CANADIAN CHILD VICTIM WITNESS PROGRAM MODELS

The London Family Court Clinic

The London Family Court Clinic is a pioneer in the field of child witnesses and child victims in Canada. In 1986, the clinic was awarded a Laidlaw Foundation grant through which the service model and protocol were developed. This initiative was able to continue as the following year, Health and Welfare Canada launched a "Sexual Abuse Initiative Program". Funding was made available to researchers across the country to help develop and evaluate programs for child sexual abuse victims in the areas of assessment, treatment and criminal prosecution. Coinciding with this initiative, the passage of Bill C-15 created the opportunity to track two components simultaneously: (a) witness preparation; (b) the implementation of provisions found within the new statute.

As the literature had shown, one of the major difficulties child witnesses experienced in the court system was their lack of knowledge of the court process and their role. At best the courtroom was viewed by children as an unfamiliar place and, at worst, as a forbidding environment, a place in which "if the witness gives the wrong answer, he'll go to jail." (Saywitz, 1989, pg. 150).

The London Project was set up to work with child witnesses on an individual basis, thus allowing the most flexibility in adapting the core curriculum to the needs of the individual child. A courtroom model and dolls designed by the Family Court Clinic staff were used to assist in teaching the child. The core elements of the curriculum were established:

- court personnel
- their functions
- the rules of etiquette
- the sequence of events

Over the life of the project (1988-1991), 71 children participated in this therapeutic model. The preparation treatment sessions totalled 5.45 hours per client over the course of 5.44 weeks of preparation. The following table illustrates the distribution of time in court preparation alone.

	Mean for T X Sample
Number of sessions before pre-trial	4.08
Number of sessions before trial	2.03
Total sessions	5.18
Total number of hours	5.45
Total weeks of preparation	5.44

In attempting to determine the total number of clinical hours that were involved in supporting a child from the beginning to the end of a court proceeding, the following breakdown identifies the activities involved:

- 1 hour intake session with the family;
- 1 hour screening of the child which included psychological testing;
- 6 preparation sessions (I hour each);
- attendance at court with the child on preliminary hearing and trial dates (minimum of 4 hours each);
- 1 hour debriefing of child after court was over;
- 1 hour consultation with the police/crown attorney;
- 1 hour for Victim Impact Statement (optional)

In 1993, The London Family Court clinic conducted a longitudal study of the social and psychological adjustment of child witnesses referred to the Child Witness Project. It was entitled "3 Years After the Verdict".

The study returned to 126 child victims of sexual abuse who had been referred to the London Family Clinic in 1988 and 1989. In the follow-up, 61 children were re-interviewed. The parents of 73 children participated in the follow-up study. The overall goal was to determine the long-term impact of court involvement on these children. Upon average, the children were seen two years and eight months after the sentencing hearing. Their findings reveal that for a sub-group of children, their lives were still overrun with anxiety, fears, depression and intrusive thoughts of their abusive experiences.

The support of the mother was the single most important mediator on the child's adjustment. The criminal justice system factor most related to child adjustment at the follow-up was court outcome. Conviction of the accused was directly associated with an enhanced adjustment on the part of the child.

The conclusions of the study recommend ways in which the criminal justice system needs to evolve to reduce systematic stresses. Some of their recommendations, such as the support person's proximity to the child witness on the stand and the provision to prevent the cross-examination of the child by the accused, have already been adopted.

The largest outstanding issue relates to the duration of the proceeding. The London Family Court Clinic research findings have shown that one of the greatest stressors for children is how long it takes for their case to be resolved in the court system. For this period of waiting, their lives are on hold. Treatment is deferred until after testimony in order not to contaminate the evidence. The emotional scars of conflict within the family and loss of affiliation of other family members remain constant stressors. The Clinic urges the examination of models in other jurisdictions where cases involving children as complainants are treated as a priority or where the expeditious passage of a case involving a child complainant is mandated.

One final development in relation to the London Family Court Clinic is deserving of notice. In the winter of 1996, the first issue of Viva Voce was published. As a national newsletter, it is devoted to the exchange of information about services and issues among all child victim/witness programs in Canada. A second theme that will

hopefully evolve over time is the development of a national organization. Such a big step in just 10 years speaks to the magnitude of the issues and the volume of children whose lives are impacted by the legal system.

The Child Victim/Witness Support Project in Toronto

The Toronto project, entitled the Child Victim Witness Support Project, received funding from the Department of Justice Canada, for a two year demonstration period from April 1, 1987 to March 31, 1989. The development of this service was, in part, a recognition that no single organization had the mandate, expertise, or resources to assume the role of court preparation and support to child victim/witnesses.

The design of the Toronto Child Victim Witness Support Project was based on a group process. The four week program proposed to target three distinct populations:

- Children 8 to 12 years who may be required to testify;
- Children 13 to 16 years who may be required to testify;
- Adults who will be providing support to child victim/witnesses

The group model was selected on the basis that it was the most effective, efficient delivery structure. It was also believed to be beneficial in alleviating any sense of isolation on the part of the child and promoted a network of supportive contacts with others of the same age who had similar experiences.

The core curriculum developed was very similar to that of the London Family Court Clinic Project. Specific tools were designed to determine fears and assess the need for accurate information in the place of what might have been gleaned from television viewing or adult conversations.

A total of 323 children were referred to the Toronto project from August 1987 to December 1989 (2 l/2 years). Over the period during which the study was conducted, three quarters of the children were between eight and sixteen years of age. Eighty percent of the referrals were female.

It is notable that the Toronto project identified that thirty-seven percent of all referrals required individual preparation outside of the group format of the program either because the children were under eight years of age or their scheduled court date did not permit them to enter the structured group format.

V THE CHILD VICTIM WITNESS PILOT PROJECT IN NOVA SCOTIA

In September 1993, the Victims' Services Division, Department of Justice, Province of Nova Scotia initiated the Child Victim Witness Project. The project was developed in response to the fact that child victims of physical and sexual assault were identified as the top priority in the research of Dr. Christopher Murphy, Victims' Needs and Services in Nova Scotia, September 1991.

Table 10 - Rating Victim Funding Options (n=129)

		Important %	Somewhat Important %	Unimportant %
1)	Child sexual/physical abuse victims	90	5	4
2)	Sexual assault victims	82	12	4
3)	Extra training for criminal justice personnel	76	14	7
4)	Non-criminal justice service for victims	74	15	7
5)	Public information and education	73	16	7
6)	Coordination of community and criminal justice victims' services	73	20	4
7)	Community and self-help groups	70	16	10
8)	Court related information resources	70	18	7
9)	Aboriginal and minority victims	60	20	14
10)	Research and evaluations of victims projects	52	20	25

This independent study of victims' needs and services arose out of the introduction of the Victims' Rights & Services Act in 1989. The Act provided a legislative basis for a number of victims' rights and services. The Victims' Assistance Fund, based on the revenue provided by the Victim Fine Surcharge was established to assist with this work. Expenditures are authorized from the fund by the Governor in Council.

In April 1993, the Child Victim Witness pilot project was approved for a three year period with the expectation that a province-wide service to provide non-evidentiary court preparation to child victims of crime and their supportive adult would be designed and implemented. The pilot was to be implemented in two phases. In the first phase, the service would be researched, designed and offered on a trial basis by the program coordinator in the Halifax County Region. In the second phase, two qualified individuals in each county were to be identified and trained to deliver the service to children in their local communities. The design of the second phase called for a high degree of flexibility as the goal of the Victims' Services Division was to have the service delivered by individuals who reflected the linguistic and cultural characteristics of their region. The project was delayed until September 1993 when a social worker with a background in child protection services was hired on secondment as Co-ordinator of the Pilot Project.

Program Design

In November 1993, a consultation process was initiated in the Halifax-Dartmouth metropolitan area. Approximately 23 professionals contributed their time and shared their experiences with child victims with the Victims' Services Division. Police investigators, child protection service social workers, Crown attorneys from the Public Prosecution Service and mental health therapists brought their respective expertise to the deliberations.

There was no shortage of issues to be addressed.

The sensitivity of the investigation phase required constant vigilance in the areas of protocol and coordination between police and child protection services.

Contamination of evidence and the appearance of coaching needed to be avoided at all costs in order not to jeopardize the case. A standard of practice would be that at no time would the facts in the case be discussed.

Structured sessions would assist in standardizing the delivery of service. It also ensured that the service could be accountable to any challenge and in a position to describe the scripted responses to standardized questions.

The timing for court preparation was recommended to begin at six weeks prior to the court date. Undue anxiety for the child could be the result of too early a start. Any later and sufficient time might not be available to adequately prepare, liaise with the Crown attorney, provide a courtroom tour and marshall the necessary support systems for the child and family.

The curriculum for the program was adopted from the Child Victim/Witness Support Project in Toronto. The quiz entitled "What I already know about court" provided a means of assessing the child's existing information about court. The other assessment tool that was used, My Fear Checklist, provided a means of giving reassurance, problem solving and identifying any significant concerns that could have a bearing on the child's ability to testify. Both the court quiz and fear checklist had been extensively used in the Toronto program. That program, in operation for several years at the time, had established credibility. Their tools, used with their support and assistance, allowed the pilot to begin in Nova Scotia with a curriculum that was tried and proven.

The current literature has focused on the challenges of courtroom communication. It seemed important to teach children to listen carefully to leading questions, to encourage them to ask to have a question repeated, to ensure that they felt sufficiently supported to say, "I don't know" or to simply disagree. It was decided that a second preparation component would be introduced after the information session to focus on skill building in communication and listening to "tricky questions". This worksheet was developed to give some structure to role play exercises developed to

build confidence when faced with leading questions. The technique of obtaining an account of a routine event from a child is found in the step-wise approach to investigative interviewing with children. Afterobtaining the account by means of open-ended questions, such as who, what, when, where, etc., the child is questioned about this same event using leading, double and tag questions. Inside an investigation, this strategy is introduced to assess the degree of suggestibility of the child. Inside the process of court preparation, children are encouraged to listen carefully and to learn to say "I don't know", "I don't understand the questions," or "no, that is not correct". At no time in the role play, or any part of court preparation for that matter, are the facts of the case discussed.

Liaison with the Crown attorney was an important component of the program. The policy of the Public Prosecution Service provides for the Crown to meet with child victim/witnesses for a session in advance of the day of the court appearance. Work load, late assignment of cases, conflicting schedules and sudden adjournments all presented as systemic obstacles to this policy. Crown responded by arranging lunch hour or late in the day meetings and court tours.

The court accompaniment component evolved over time. The policy developed by the Division to assist in guiding this decision set out the following factors in determining whether court accompaniment should be provided:

* Multiple victims attending court at the same time.
* A specific request from the Crown Attorney, Mental Health or Child Welfare.
* A prior history of victimization on the part of either the parent or child.
* The need for the parent to receive additional emotional support for themselves.
* Lack of a support person.

Debriefing was built into the structure of the program in recognition of the need to revisit the experience, have questions answered, and ensure that the child felt that s/he had done a good job. If this court hearing was a Preliminary and the next phase involved the Supreme Court with either a Judge or Judge and jury, it was critical for all concerned that the court experience be processed. Otherwise, these dynamics would remain unresolved and serve as barriers or impediments in the Supreme Court trial appearance.

It quickly became apparent that in cases involving child victims, any preparation of a Victim Impact Statement needed to await the completion of the trial. Review of the events became an inevitable part of the process of assisting the child or child and family in completing their Victim Impact Statement. The decision to defer completion has resulted in a missed opportunity to complete a Victim Impact Statement in a small proportion of cases. Overall, the policy was intended to err on the side of caution.

The Child Victim Witness Pilot Project Protocol is comprised of 12 steps referred to in Appendix A of this report.

Consultation with the staff of the Metropolitan Toronto Special Committee on Child Sexual Abuse played a significant role in the early stages of program design. The consultation in Nova Scotia was able to move forward more quickly and address protocol and referral issues. The court orientation kit for child witnesses, "My Court Case" was an invaluable resource. The hand puppets, courtroom card and plastic stand-up figures and the activity book, What's My Job In Court, became the foundation pieces of the curriculum for the Nova Scotia Pilot Project. The challenge was to translate a curriculum that had established credibility in London and Toronto into a province-wide service in Nova Scotia.

The Model by Comparison

	London	Toronto	Nova Scotia
Geographic Base	1 city	1 city	province-wide
Population	Stats Can. 331,900(1991)	2,300,000	800,000
Funding	Health & Welfare Canada	Justice Canada	Victim Fine urcharge
Meeting place for sessions	office	office	office/community/home
Time of day for sessions	flexible	fixed	flexible
Child & support person together	yes	no	yes
Average no. of sessions before Court	4	6.8	3
Court Accompaniment	yes	no	yes
Implementation Committee	yes	yes	yes
Standing Advisory Committee	yes	yes	no
Introduction of sessions flexible	yes	no	yes
Use of role play	yes	yes	yes
Standardized curriculum	yes	yes	yes
What's My Job in Court	yes	yes	yes
Assistance with Victim Impact Statement	yes	no	yes

Implementation of the Service in Nova Scotia

The trial phase of the Project was offered in the Halifax County Region by the Coordinator for the first five months of 1994. This region serviced the Provincial Courts in Bedford, Dartmouth and Halifax as well as the Supreme Court for the entire region. The test period afforded the opportunity for Crown Attorneys, especially, to become familiar with the curriculum of the program. It did not take long before the coordination of service was challenged with conflicts in scheduling as more and more court accompaniment was being recommended as the level of support required by the family.

The first child to receive service was referred by a Crown Attorney in advance of the official start date for the trial phase of service. The time lines for the delivery of service, ie. start at six weeks, went by the wayside as the Preliminary court hearing was a matter of days away. In the four months of trial delivery, experience taught us that education for referral services was as vital as the service itself. As with the introduction of any new service, knowledge of the program spread on a day-by-day, case-by-case basis, as well as by formal presentations to child welfare and policing agencies.

The service was initially conceived as office based. Within the first month of operation, numerous difficulties had been identified:

- difficulty in arranging child care for others in the home
- different school schedules
- lack of transportation
- work schedule

The flexibility to offer the service either at the office of the Victims' Services Division or at the family's home seemed to address these barriers.

Within a five month period, 31 children and their supportive adult had participated in the information and skill building sessions. The tools and curriculum were enjoyable to use and effective in communicating the information about court. With a growing acceptance of the service, as evidenced by the rate of referrals, the Victims' Services Division decided to implement the service in the summer of 1994, in three of four regions of the province. The service was offered through the Regional Victims' Services Offices located in Sydney, New Glasgow and Dartmouth. The Regional office in Sydney was responsible for all services to the four counties located on Cape Breton Island. The New Glasgow office covered service in five counties, Cumberland, Colchester, Pictou, Antigonish and Guysborough. The third office, located in Dartmouth, was responsible for Halifax county. This office would be challenged by the volume of cases as much as others were challenged by distance and the isolation of rural communities. Service to the Western Region covering eight counties, Annapolis, Kings, Hants, Lunenburg, Queens, Shelburne, Yarmouth and Digby, was offered in the final phase of implementation, thus making the program province-wide by March of 1995.

Model of Service Delivery

The model of service anticipated that Victims' Services Officers in the Regional offices would become experienced in all aspects of the delivery of services to children in relation to the criminal justice system. As changes in practice and case law impact on case management, it is vital that the Victims' Services Officers remain involved and informed about the issues. It was also very evident that the second phase of the service model involving the use of a roster of child support consultants on a case-by-case basis to provide court preparation service to children was necessary as the numbers of cases involving children was high. The specific components of contract service were identified in such a way as to fit or integrate within the overall duties of the Victims' Services Officer who would maintain case management duties and assume responsibility for liaising with other components of the criminal justice system. The steps from 2 to 12 in the protocol, as identified in Appendix A of this report, were established as the elements for contracted service.

The challenge of designing the qualifications for child support consultants was complex. In recognition of the vulnerabilities of child victim/witnesses, it was felt that formalized training and professional experience in working with children were both essential. While the value of certificate training in child care studies was recognized,

the decision to include such qualifications led to liability insurance difficulties later down the road.

Approximately two hundred and thirty resumes were received in response to advertisement. At outcome of interviewing, the goal of having consultants from each county had not been achieved. The final picture at the end of the competition was as follows:

Consultant Distribution by County

Cape Breton	6	Victoria County	0
Inverness	1	Richmond	1
Guysborough	0	Antigonish	2
Colchester	1	Pictou	5
Halifax	8	Hants	3
Kings	2	Lunenburg	0
Queens	0	Yarmouth	1
Shelburne	2	Digby	1
Annapolis	1	Cumberland	0

As the pattern of referrals emerged, however, consistencies were noted between concentration of population of complainants and the population of consultants.

The background experience of consultants touched on every conceivable field of service to children: education, child protection, mental health, foster care, residential child care, transition house, health care and day care. A common theme among consultants was a very limited experience with the criminal justice system. The complexities of this system became the focus of training offered in each region by the program coordinator and the staff of the Regional Victims' Services Offices.

While the uneven geographic distribution was somewhat of a disappointment, the lack of response from minority populations, leaves the issues of cultural diversity to be further explored. Four separate outreach presentations were offered to Mikmaq communities. While the service was well received and utilized, we have had no success with individuals coming forward to be actually engaged in the service. We have had participation from the Black community, however, we do not have a province-wide representation and recognize that more work is required within this communities as well.

The basic model for the use of private consultants for the provision of court preparation services for children is "managed care" or "contracting out."

The Child Welfare League of America's publication Managed Care: An Agency Guide to Surviving and Thriving has identified the four hallmarks of managed care as the following:

1) service delivery is organized through a selected grouping of providers,
2) arrangements exist for the review of the appropriateness of the services provided,
3) the managed care system exercises control over reimbursement methods for providers,
4) service intensity is planned in advance, based on an assumption about an appropriate quantity of intervention given certain presenting conditions.

All four elements are operable in the Nova Scotia program model. The Child Support Consultant Roster is comprised of a selected grouping of providers. An internal evaluation to be complete in July 1996 will address the appropriateness of the service component. As cases are assigned one at a time, there is a firm control and link between service payment and quality control. The steps in the program are clearly outlined in the protocol and the content of each session is pre-determined.

ISSUES FOR THIS MODEL

Conflict of Interest

The issue of conflict of interest in relation to using consultants who may also be employed with other services in the community needed to be tackled on many fronts. The first of these was from the perspective of the clients and their comfort level with receiving victim/witness support and information from an individual who they might deal with in another setting such as a school or hospital. The second perspective was that of the consultant's employer who may have concerns about their employee's role in relation to this service if the client was also in receipt of service from the consultant's agency. With assistance from a child welfare agency, the conflict of interest policy was drafted with a view to considering all of the perspectives of conflict of interest and how it might influence/impact on practice. The policy reads as follows:

At no time may a Child Support Consultant engage in the provision of service in a case through the Victims' Services Division if the child or family have been known to them through any other professional role that the consultant may be engaged in.

At no time may a Child Support Consultant engage in the provision of service in a case through the Victims' Services Division if the consultant is in any way affiliated with an agency or facility from which the child or family is currently receiving service.

A condition of accepting a case is the commitment to be available to provide court accompaniment.

There have certainly been occasions when these definitions have excluded case assignment. To date there has been a reasonable degree of flexibility within the regional roster so that the service can proceed uninterrupted.

Professional Liability Insurance

The practice of contracting services is relatively new within government circles. The question of liability insurance for individuals in private practice is largely dealt with by the professional regulating body involved and the purchase of professional liability insurance through that professional organization. Of the thirty four individuals identified at the conclusion of the competition, twenty-six had direct access to the purchase of such insurance by virtue of their membership in a professional association such as psychologists, social workers or therapists. For the group of eight individuals with child care certificates, no such equivalent organization existed. Yet these individuals had shown a strong standing in the competition and were held in high regard within their communities.

The search for liability insurance was long and frustrating as individuals obtained different opinions and conflicting advice from various insurance carriers. Eventually, one consultant met with success once the carrier had reviewed the language of the child support consultant contract and the policy manual outlining the components of the service. This same carrier was willing to offer coverage to each individual consultant who did not have membership in a professional association. The insurance is purchased directly by the individual consultant without any involvement on the part of the Victims' Services Division. The persistence on everyone's part has paid off as these consultants have participated fully in all aspects of the service. The diversity of their backgrounds has enriched everyone's experience in developing a roster.

Cost Effectiveness

While the need for specialized court preparation services for children was readily apparent from the initial stages of the project, the cost effectiveness of the service can only be assessed retrospectively. As the content and curriculum were primarily adopted from other well established Canadian child victim/witness programs, research and information on the effectiveness of those programs can be generalized to the Nova Scotia program. The two major Canadian program models differ significantly from the Nova Scotia program, however, in terms of geographic area served and mode of service delivery. Both of these considerations have major cost implications.

At present, little information is available on the cost effectiveness of the various models of service delivery. This issue will be addressed in relation to the Nova Scotia program by an independent evaluation of the program conducted by external evaluators at the conclusion of the pilot phase of the program. It is anticipated that the evaluation will be completed by July 1996.

VI CHILDREN'S EXPERIENCE IN NOVA SCOTIA COURTS

What the Data Can Tell Us

During the months of November and December 1995, information was collected from the 445 files referred to the Child Victim Witness Pilot Project between January 1994 and December 1995. The three objectives of the data collection were:

- Identification of the characteristics of the population of children who were referred to the service.

- Determination of the patterns of referrals for the service by region of the province and month of the year.

- Based on the nature of the offence and relationship between the child complainant and the accused to determine what, if any, implications there would be for the management of such cases within the criminal justice system.

The following variables were selected to assist in the search for this information:

The variables:

- Cases by Gender - Chart 1
- Cases by Age Group - Chart 2
- Case Age by Gender - Chart 3
- Categories of Offenses by Number of Cases - Chart 4
- Categories of Offence by Gender - Chart 5
- Relationship of Child to Accused - Chart 6
- Case Decisions From 01/94-12/95 - Chart 7
- Services Received by Case - Chart 8
- Number of Cases by Region - Chart 9
- Referrals by Month - Chart 10

The legend detailing the definition of terms used on the charts is Appendix B of this report.

The numbers of cases included in the file review, in combination with the frequency distribution determined within the variables were found to be statistically significant. It is therefore reasonable to conclude that the findings from the experience of the pilot should be given weight when considering the next steps in design of services for children.

Chart 1: Cases by Gender

As illustrated in Chart 1, the gender of complainants is reflected in a 72 percent female to 28 percent male distribution. This is consistent with the findings in other jurisdictions. The barriers and sanctions associated with disclosures of sexual abuse by male children have been identified in the literature as a factor in the under representation of male children in the complainant population. The implementation of support services such as those provided through the Child Victim Witness Project should gradually increase the confidence of all child complainants both male and female. As the court system becomes more child friendly, a hypothesis worthy of further study would be the impact of such changes on the gender ratio of child complainants.

CHART 1

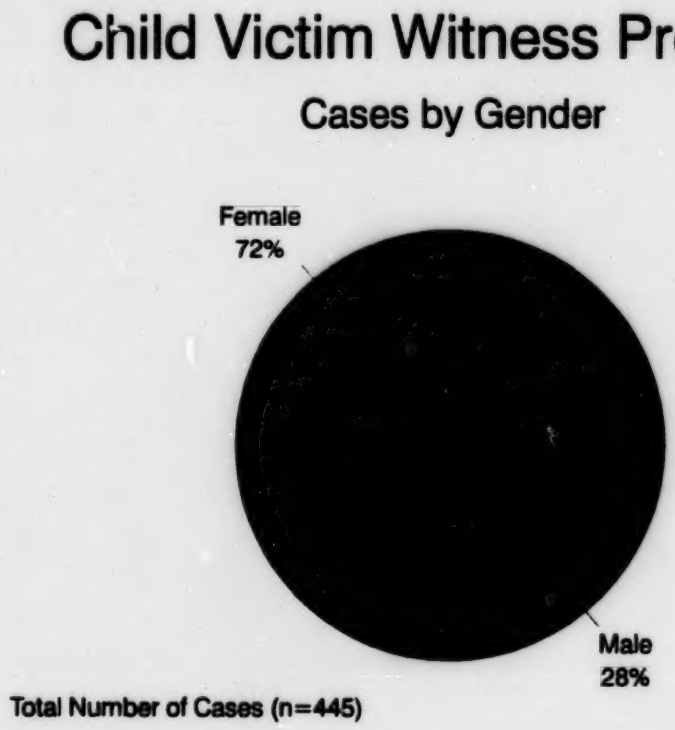
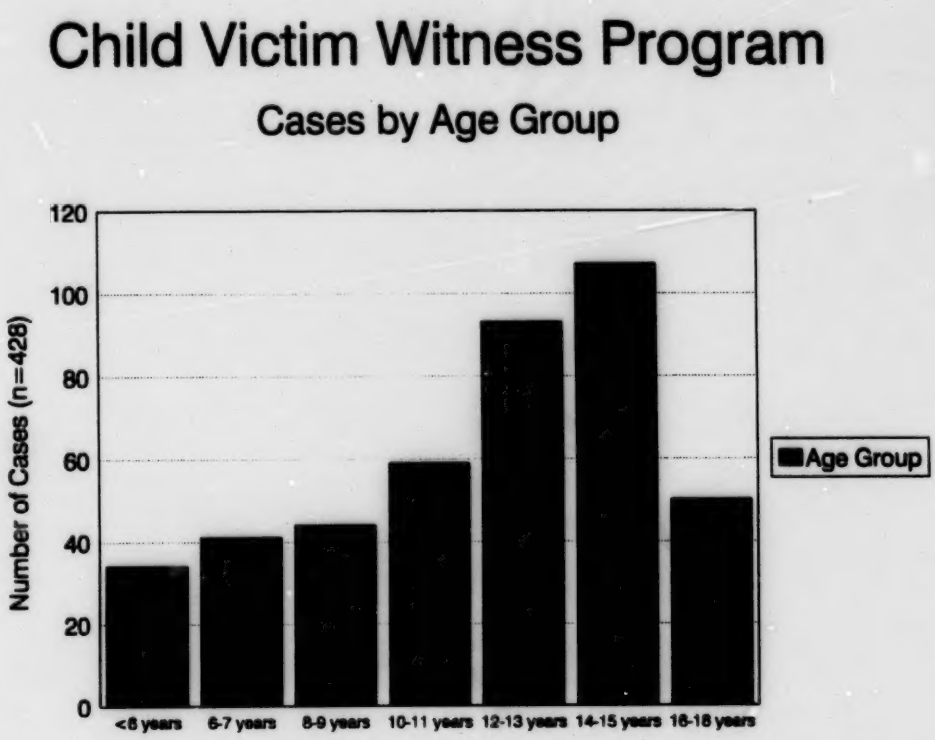


Chart 2: Cases by Age Group

The distribution of client population by age as depicted in Chart 2 contains information particularly relevant for the future design of the service in Nova Scotia. As previously indicated, the tools selected for use during the pilot were adopted from other jurisdictions. As with the activity book, "What's My Job in Court?", these materials were directed at a relatively young population up to 12 years of age.

CHART 2



The findings indicate that the largest group of clients is between 12 and 15 years of age. The sensitivities in this population to age appropriate and adolescent issues cannot be overstated. While the individual sessions allow the identification of fears and need for support to be addressed in a manner tailored to the needs of the child complainant, the printed materials are directed at an age group below the primary service group.

The maturity of the complainant group is significant in relation to the focus of current research and training in investigative interviewing with children. Much of this work is currently focused on very young, pre-school children. A major emphasis of this work is on the question of credibility and suggestibility of children. While these risks have been demonstrated to be significant, adolescents may be as capable as adults in terms of their general level of ability to understand the process of the criminal justice system.

Chart 3: Case Age by Gender

An analysis of age in combination with gender of the complainants indicates that male adolescents were a significant population served by the program. To date, we have not identified resources that are directed to a male adolescent population. Such complainants are typically the subjects of physical assaults arising from conflicts within their peer group in school and social settings. The fear of further altercations, sanctions by peers for testifying and societal messages denying male need for emotional support are complex subjects. An appropriate printed resource that would provide the male adolescent with information and support while ensuring privacy would be a positive addition to the existing service.

CHART 3

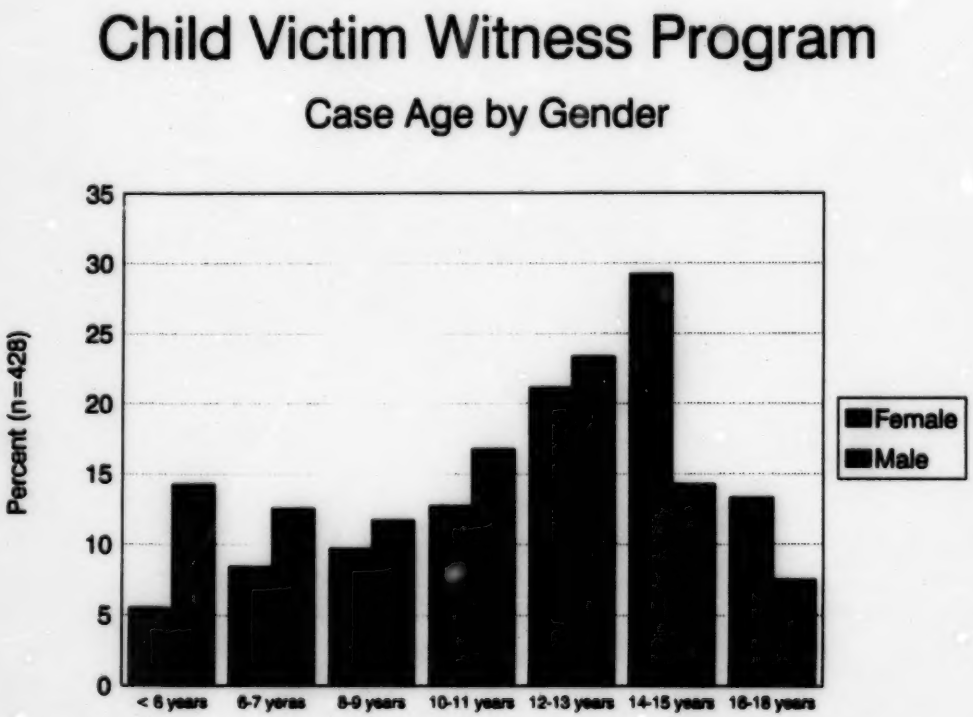


Chart 4: Categories of Offenses by Number of Cases

As indicated in Chart 4, an overwhelming majority of children who are testifying in the criminal courts in Nova Scotia are victims of sexual offenses. Further definition is given to this profile of child complainants in the next chart which correlates type of offence with gender.

CHART 4

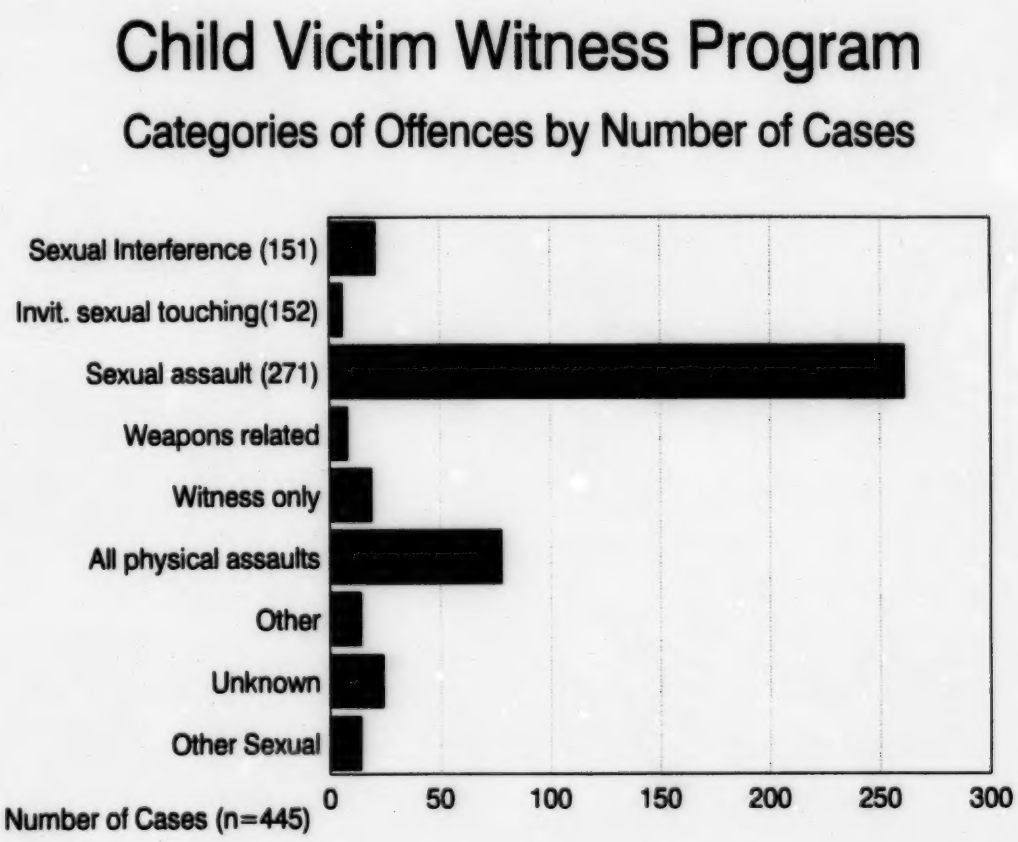
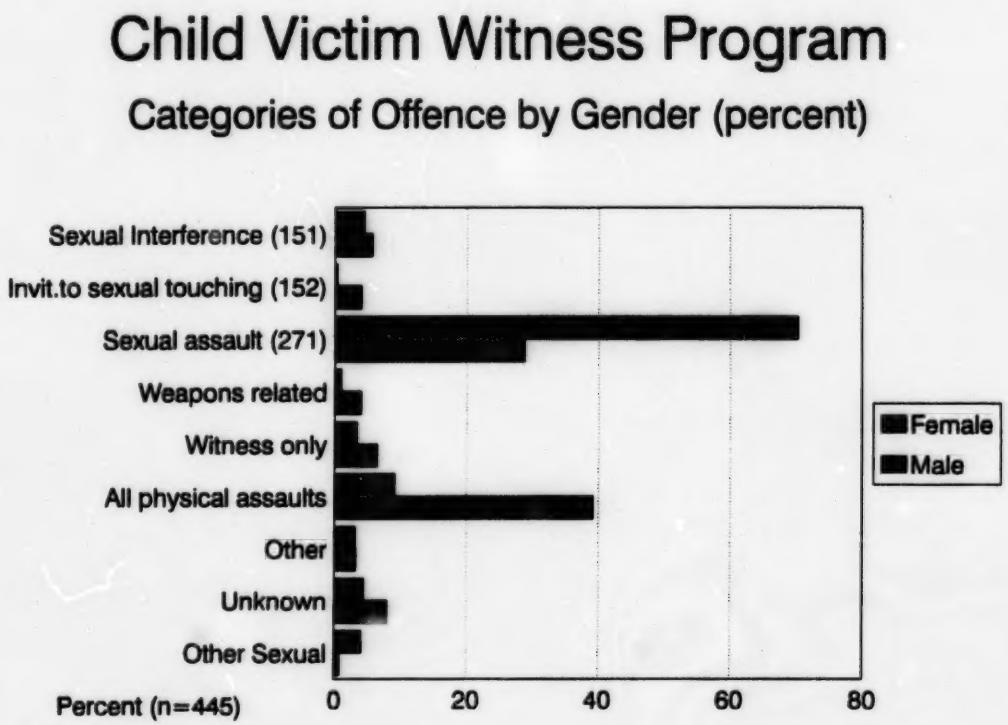


Chart 5: Categories of Offence by Gender

Female complainants are overwhelmingly represented in the range of charges covering sexual assault, while the male complainants are overly represented in the charges covering physical assault and violent events. The choice of Crown, at least in the female complainant cases, could have significant bearing on the ability of the complainant to be an effective witness.

CHART 5



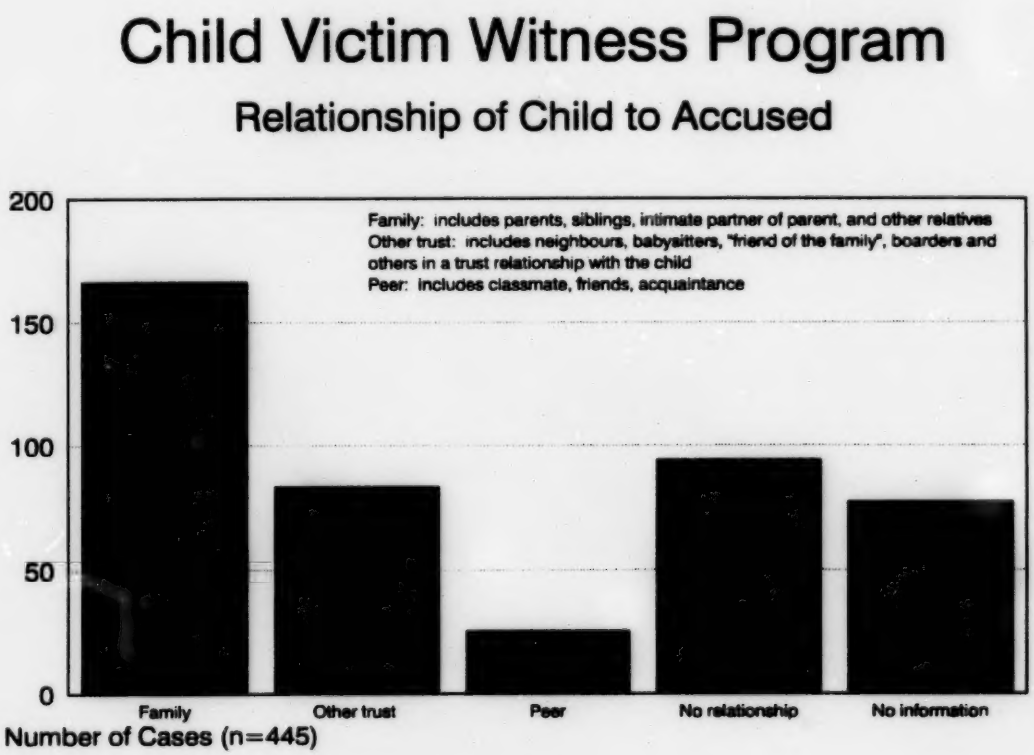
This chart, in combination with Chart 3 which considers case age by gender, identifies another significant population, specifically found in urban areas. They are male adolescents who have been the victims of a physical assault by a group of peers. The phenomenon of "swarming" is a fairly recent one.

The sense of fear and shame on the part of these victims can last throughout the entire Junior High or High school experience. Our society still does not easily give permission for male adolescents to engage in therapy. Without assistance, there is a significant risk that these individuals will be unable to socialize and accomplish the developmental tasks of adolescents, again ensuring a life-long impact.

Chart 6: Relationship of Child to Accused

Chart 6 clearly establishes that in a majority of cases the alleged offender is in the family or in another position of trust in relation to the child. When one considers the inter-relationship between this variable with the variables of type of offence and age and gender of the child, a profile of the population of child complainants emerges. This profile suggests that the largest population of our clients are female adolescents who have been victims of some level of sexual abuse within the family or extended family system.

CHART 6



This finding has significance in that all of the features outlined in the literature concerning the trauma for older children in terms of loss and conflict are operative. These child complainants must continue to deal with the ongoing dynamics of their family and the impact that a trial will have on these dynamics. For the duration of the case within the criminal justice system, the child will be caught in the middle of their family's dilemma. Individual members struggle with their frequently divided loyalties. Given the adversarial nature of the criminal proceedings, the child may be faced with the loss of affiliation of many significant family members.

The question of doubt as to who should be believed remains alive until the matter has been concluded. Thus, even while we are frequently reinforcing with the child the concept that s/he is not to be blamed for what has happened, s/he may be receiving a totally opposite message from a variety of family members. This sense of responsibility, and of being caught in the middle, is one of the main ingredients of the trauma that remains in place for the child as the matter proceeds through the court system.

The second major theme is the sense of betrayal and loss that flow as a consequence of being a victim of sexual abuse within the family. The stages of grief and loss relate to the sense of safety and security of place as well as person as such events are likely to have occurred in a space where the child thought they were safest.

When one considers the dynamics of the conflict and stages of grief and loss, it is even more significant to consider that therapy is now routinely being deferred around these core issues until the matter has been concluded by the criminal justice system. In attempting to weigh the impact on the population identified in this project, it is imperative to factor in the intensity of emotions already present in adolescence in combination with the tasks of development and socialization in adolescence for they have life-long implications. Self esteem, trust and conflict resolution skills are all in a formation stage. It is the mix of all of these dynamics which provides the explanation as to why the experience of being a child complainant will have a life-long impact. As the implications for the next steps in our service will come from our better understanding of our clientele, this profile is an important consideration.

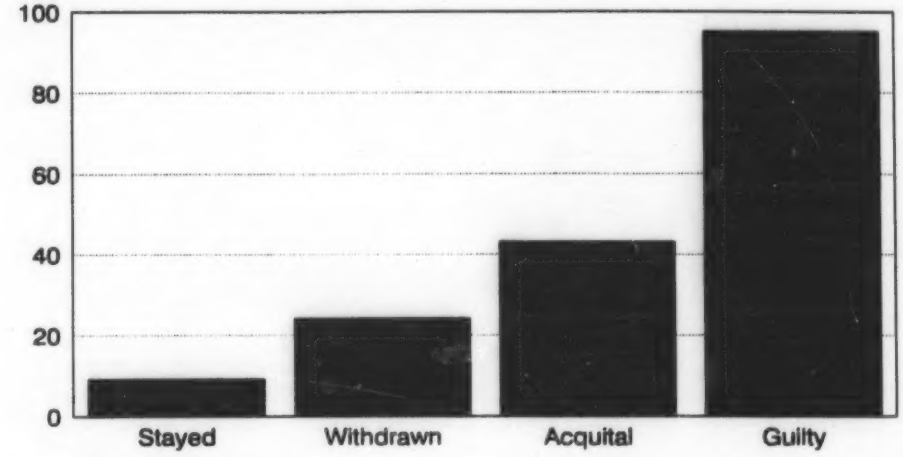
Chart 7: Case Decisions From 01/94-12/95

Chart 7 depicts the final outcomes of those cases that have been concluded during the life of the Pilot. It is significant to look at the number of convictions in relation to the other categories of acquittal and withdrawal. There are a variety of ways that a matter could have arrived at conviction. A number of convictions are arrived at by a process of negotiation which may be ongoing up until the actual day of the court hearing. The actual presence of a child complainant at the court house may be a factor in having a matter settled. The service of preparation and support is as important for this population of children as for those who actually testify. A sudden settlement at the last moment may result in the child complainant and family feeling that they have not been granted "their day in court".

CHART 7

Child Victim Witness Program

Case Decisions from 01/94-12/95



Number of Cases (n=171)

The conviction total does, however, include children who testified once or twice as would be the case for matters which proceeded to a Supreme Court hearing before a Judge alone or Judge and jury. For the children in this final category, the impact of the criminal justice experience can predictably be the most severe, for they usually have been exposed to repeated experience as a witness under cross examination over the longest period of time.

Time has not permitted a deeper analysis at this point as to the factors at play in cases resulting in acquittal. On a case by case basis, Victims' Services Officers can give illumination to these cases. Fatigue in a young child can play a significant part in how effectively they are able to communicate their evidence. Lengthy travel the day of court and lengthy waits at the courthouse have both been observed to cause a marked deterioration in a child's ability to be an effective witness.

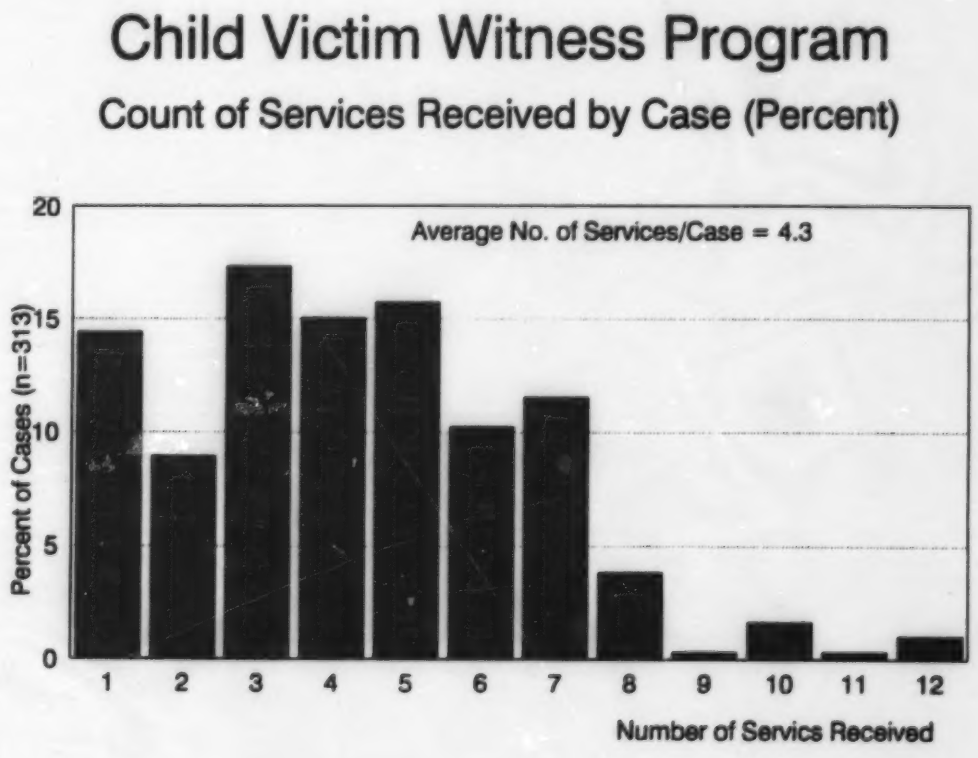
In the instance of withdrawn charges, this has at times occurred after a child and her/his support person have received court preparation. The decision is generally based on a lack of evidence. Unfortunately such determinations are sometimes arrived at late in the process and most likely speak to the limited amount of time available to the Crown Attorney to review the file. The timing of a case assignment can play a significant role in determining the process of file review. As child complainant cases do not currently have a special designation, there is no mechanism in place to introduce a specialized case management system.

The trauma for a child associated with a withdrawn charge or an acquittal can be permanent. It is inevitable that some cases will result in such outcomes. It is the responsibility of the justice system to develop a case management system that will reduce the rate of acquittal and withdrawn charges to the largest degree possible. An early review by prosecutors in relation to the evidence would significantly reduce the trauma experienced by children in these instances.

Chart 8: Services Received by Case

Chart 8 provides an overview of the frequency with which elements of the Child Victim Witness Pilot Project have been provided. This representation of services provides a view at a very early stage in the program, for a significant number of cases are still working their way through the process. This understanding is critical to the interpretation of very low numbers of cases in the final stages of the service. The independent evaluation of all programs in the Victims' Services Division will be in a much better position to bring analysis to the impact and effectiveness of the service components.

CHART 8



Court accompaniment is a particularly sensitive component of the service for a number of reasons. It is potentially very costly as many individuals need to be trained and available to provide the service at any given time. Sudden adjournments and continuances provide scheduling difficulties for Child Support Consultants and Victims' Services Officers alike. Given these difficulties, we are told over and over again that the support on the day of the court hearing is as important to the parent as to the child. Further work on needs assessment and alternate sources of support will need to be explored if this component of the program cannot be sustained.

The service components provided during the pilot were based on the content of other programs, the design of those programs and the recognition that accurate communication was a key factor in assisting children to become effective witnesses. The refinement of those elements awaits further evaluation.

Chart 9: Number of Cases by Region

It is not surprising that the largest number of cases are in the highly populated metropolitan area. The relatively low number of cases in the Western Region, as compared to the Central and Cape Breton Regions, is explained by the late start of the program in that area. It is too early to predict whether significant differences in demand will appear across regions as the program matures.

CHART 9

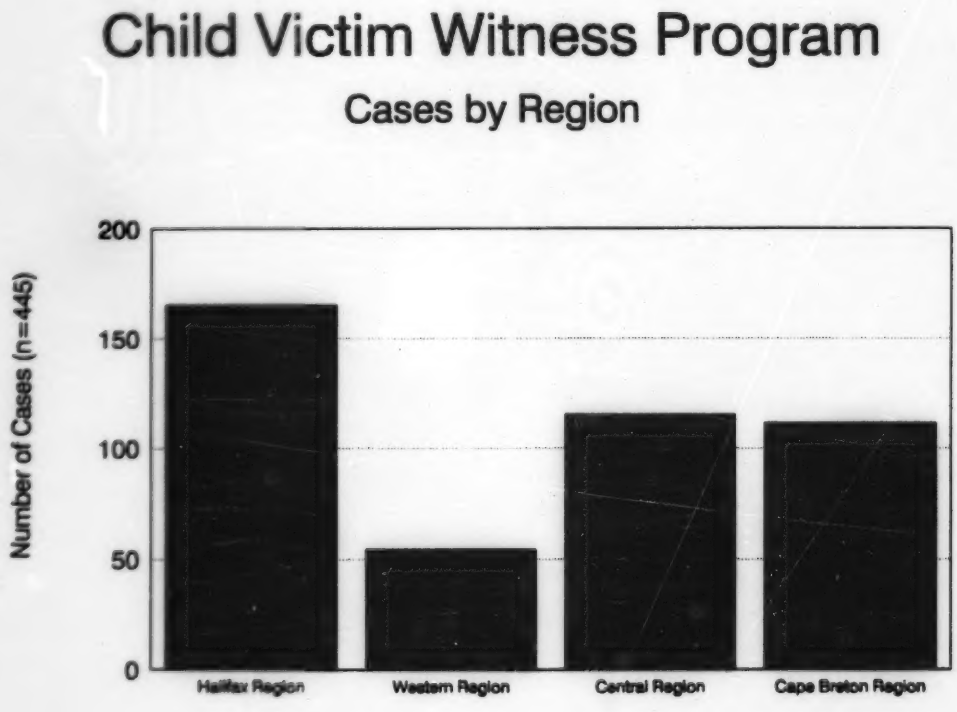
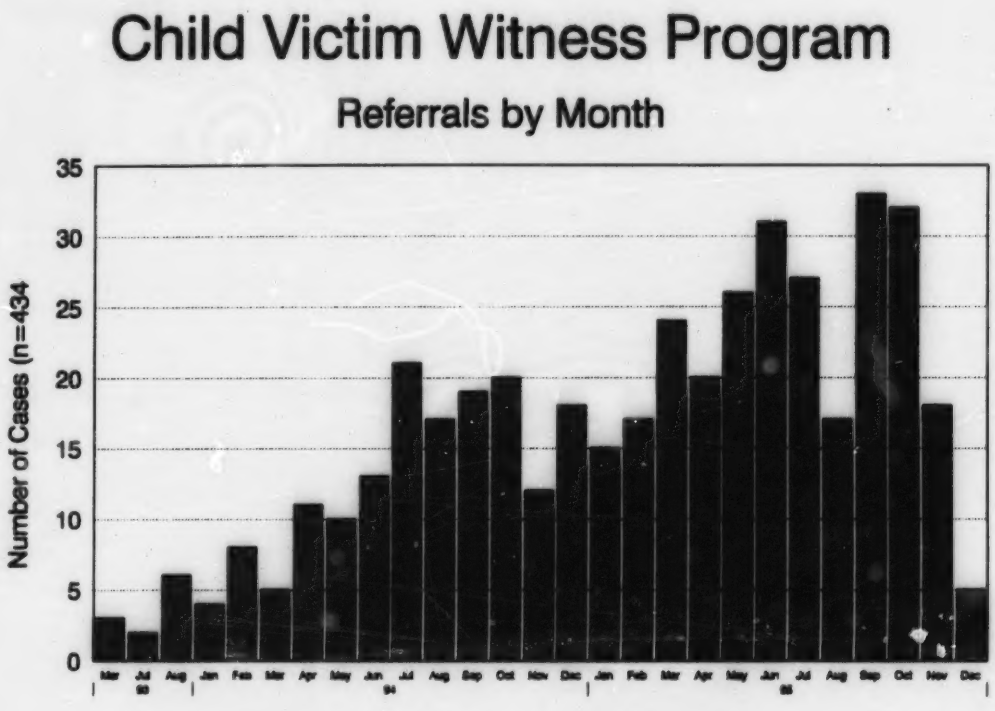


Chart 10: Referrals by Month

The trendline is a statistical tool used to bridge minor fluctuations in the data and is used in order to highlight the overall trends. When the pilot was started in the highly populated metropolitan area, the service was provided by a single individual. The sudden incline in service demand in June 1994 reflects the expansion of the service in both the Central and Cape Breton Regions through the Regional Victims' Services Program. The demands for service quickly expanded beyond the capacity of the Victims' Services Officers. In March 1995 the Child Support component of the service was introduced. The Western Region began to offer services through Child Support Consultants in April of 1995.

CHART 10



When considering the length of time that is required for a case to move through the system, in combination with the rapid growth in demand for the service, the overall accumulated caseload is significant in terms of volume. It is possible that the frequency of referrals is affected by seasonal factors such as Christmas and summer vacation. It would be premature to draw conclusions based on the limited experience to date.

VII CONCLUSIONS

Criminal Code amendments impacting on children, commonly known as Bill C-15, have been operational for eight years. Before the Child Victim Witness Pilot Project was established in September 1993, no mechanism existed to measure how these amendments impacted on children within the justice system in Nova Scotia. The data discussed in this report begins to provide some definition to the subject of child victim witnesses in this province. It is only a portion of the story.

The emphasis on what occurs within the courtroom is understandable given both the novelty and visibility of the children themselves. The use of a screen or closed circuit television as means of reducing the trauma for a child in giving evidence have been widely discussed. Practices such as these can be helpful in a given situation and serve to underline sensitively to the unique needs of the child. There are other criminal justice system advances such as those found in Bill C-129 concerning a support person in the courtroom for the child and the exclusion of the accused from direct examination of the child in the courtroom.

In providing information and emotional support services to children, however, we, as service providers, have learned a great deal about how their lives have been affected by their court experience. What occurs outside the courtroom is often as significant as what occurs within it. In some instances such events have a direct bearing on the quality of the evidence the child will be able to give. Factors such as delay in the proceedings significantly influence the long term emotional and psychological impact that criminal justice involvement has on a child.

A Child's Sense of Time

Delays in the form of adjournments and continuances come about for many reasons. They have been associated with increased anxiety, delayed treatment and risk that the quality of evidence over time will be reduced. The reasons for delays identified by the London Family Court Clinic in their work Three Years After the Verdict are provided as illustrations.

* the dismissal of defense counsel on the date of hearing by the accused
* withdrawal of defense counsel due to a lack of fees
* witness unavailability
* conflict in scheduling for a Crown Attorney
* insufficient time allotted to complete the case

These explanations for adjournment are familiar to child victim/witnesses in Nova Scotia. Sudden adjournments are a source of upset for the child and family for a variety of reasons:

* The process increases the family's feeling of being out of control as they have no ability to bring closure to an episode that was traumatic at the outset, conflictual as it unfolded and a matter of public scrutiny throughout.

* The prospect of testifying or retestifying often has an impact on a child's school performance. Poor marks in one school year can generally be addressed the following year. A situation of stress and uncertainty that drags into a second school year can result in sufficient lost ground so that the child will fail the school year. A secondary outcome of academic failure is the loss of peer group as the child is left behind as the group advances. This represents another loss of self-esteem for an already vulnerable child.

* Fear of contamination of the evidence is now so prevalent that most clinicians are becoming reluctant to address treatment issues arising from the charge until the conclusion of the court matter. Little research appears to have been conducted in the area of delayed treatment. In other circumstances we have learned that the longer a trauma is left untreated, the greater the impact. While the correlation between court delay and treatment remains to be studied, what children tell us in anger and frustration is that it takes too long.

Recommendation:

The numbers of cases competing for the court's time is a larger issue than the scope of this report. There are, however, jurisdictions in the United States where either administrative policy or mandate ensure that cases concerning child complainants are processed within fixed timelines. Such timelines are routinely found, for example in the child welfare legislation where the emphasis is placed on the timeliness of making decisions that affect children's lives. Information on the current delays for child complainants could be obtained through JOIS. Further study should be completed to assist in the development of case management guidelines.

Other aspects of time and delay have an impact on the child the actual day of the hearing. Children and their families are routinely requested to be on hand early in the day. It is an excellent practice to have the child appear as the first or one of the earliest witnesses of the day. When numerous other matters are scheduled beforehand, a wait of several hours for the child is not uncommon. Children waiting in a state of tension tire easily. Once fatigued, a child's attention span, ability to listen and readiness to fully communicate are all influenced.

In the locations where Victims' Services Offices are located, the availability for a separate suitably equipped waiting room offers a significant support to the child and specifically offsets the impact of inevitable delays that come up on the day of the trial.

Recommendation:

In all planning for court facilities, child-friendly, appropriately equipped spaces should be ensured for the privacy and comfort of child victim/witnesses and their supportive adults.

Cases involving child victim/witnesses should be scheduled as the first matter of the day, with the child being one of the first witnesses to be called.

The Prosecution of the Case

Preparation of a case involving a child complainant is time consuming. A knowledge of the literature and case law are essential ingredients. A combination of experience, skill and knowledge can result in efficient and effective preparation. Such cases can be emotionally taxing. When faced with sudden assignments and a lack of time to work with the child complainant, the pressures on the Crown Attorney steadily mount. The amount of time to establish rapport, become familiar with the child's developmental level and capacity to communicate all call for more time than is routinely available to the Crown Attorney. The conventional wisdom has been that child complainant cases do not appear with sufficient frequency to support a specialized prosecution unit.

The data obtained during the Pilot, however, indicates that there are sufficient numbers of children involved in the criminal justice system to warrant specialization. The population profile also gives some indication, by virtue of gender and nature of the charge, that adolescent female complainants represent a majority of those complainants.

Recommendation:

In light of the numbers of child complainant cases being prosecuted throughout the province, it is recommended that a Public Prosecution Specialist in each Crown Region of the Province be identified. The opportunity to receive specialized training and professional development should be made available to these Prosecutors as it is for police and child protection investigators. This specialization would serve to ensure that individuals who are committed to doing this specialized work are provided the ongoing professional liaison to effectively carry out this difficult work.

Specialized Training in Communication

The experience that has been gained during the pilot project has highlighted the unique needs of children in the area of communication. On an anecdotal basis, Victims' Services Officers and Child Support Consultants have described children's struggles to discuss the Bible, or religious concepts as they reach for answers beyond their developmental stage in order to comply with the assessment of competency. It has now been clearly established in the literature that the assessment skills required to complete this task require specialized training. The individuals who are engaged in the investigative phase of these matters recognize the need for such training. While the present numbers of young children are comparatively low, we can anticipate that as investigations become more effective that even younger children will begin to appear in the courtroom. To return to the phase of Dr. Anne Graffam Walker, the "gate keepers" to the court room will be looked upon to provide balance as well as to create the atmosphere most conducive to effective evidence taking.

Recommendation:

In the interests of ensuring that the unique communication patterns of young children be understood, it is recommended that a noted expert in this field such as Dr. Walker be invited to participate in Judicial professional development.

Recent research and the identification of the number of child complainants in Nova Scotia confirms that Criminal Code amendments have been effective to an extent. There is a risk that without further change, however, child complainants will become revictimized by the justice system itself. The costs of such revictimization are incalculable.

The recommendations contained in this report do not necessarily require additional resources but rather a redistribution of resources already within the domain of justice officials in Nova Scotia. To fail to respond to these opportunities leaves a population of young Nova Scotians in doubt about the justice system. To take the next steps will provide an assurance that the justice system in Nova Scotia is responsive to its most vulnerable citizens.

Recommendation:

In order to develop a framework to respond to the issues identified, it is recommended that a forum be established to complete the study of these cases and make recommendations concerning case management and specialized prosecution services.

APPENDIX A

CHILD VICTIM WITNESS PROGRAM PROTOCOL

Investigation — **Police**
Child Protection Services

Decision Point - **End of Investigation**

Charge - No Charge

Step 1.	Referral to Regional Victim Services Program any time after the charge has been laid.	
Step 2.	Referral to Child Support Consultant six weeks prior to the court date.	
Step 3.	Session #1 with child and support person Session #2 with child and support person	1 hr. 1 hr.
Step 4.	Consultation with Public Prosecution Service - Arrangement of Courtroom Tour	
Step 5.	Child's meeting with Crown. The court tour may occur at the same time.	
Step 6.	Court accompaniment - if appropriate	
Step 7.	Debrief	
Step 8.	Booster with child prior to trial.	
Step 9.	Court accompaniment - if appropriate	
Step 10.	Debrief with child following trial Victim Impact Statement	
Step 11.	Needs assessment - outstanding issues; referral if necessary	
Step 12.	Closure with child and support person	

APPENDIX B

THE LEGEND

Definition of Terms

Case	A case is the term used to identify an individual complainant - ex. If three children from a single family are provided service, these are three separate cases.

The Program Components

Session I = SEI	Information about court etiquette, the roles and the key players and the role of a witness.
Session II = SE2	Practice in listening to complex questions to develop skills for cross examination.
Liaison = LIAS	Communication with the Crown Attorney and/or others involved in the child's case.
Meeting with the Crown = Meet	A meeting between the Crown Attorney and the child victim/ witness prior to the day of the court hearing.
Court Room Tour = C Tour	The child and support person are provided an opportunity to visit a court room, sit on the witness stand.
Court Accompaniment = CACCO	Court accompaniment involves the attendance at court of a representative of the Victims' Services Division in order to provide emotional support to the child and family.
Debrief = Debrief	This provides an opportunity for the child and family to discuss their court experience and most importantly to discuss any fears or concerns that may have arisen as a result of the court experience. This service may be offered at the end of the day of court accompaniment or on a separate occasion.
Booster = Booster	This session is introduced prior to a Supreme Court Trial. It is a review session to ensure that the child's fears have been addressed and their questions answered.
Tour = Tour	This second opportunity to have a courtroom tour is most relevant when a different courtroom from the one attended for the Preliminary is to be used.

APPENDIX B

THE LEGEND

Court Accompaniment = CACC	This term for the purpose of data interpretation refers to the service of court accompaniment at a Supreme Court Trial.
Debrief 2 = Debrief 2	This term refers to the discussion about the courtroom experience following attendance at a Supreme Court Trial.
Victim Impact Statement = VIS	This term refers to the assistance offered to a child and family in the completion of a Victim Impact Statement.

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